

BEE FOREST PRODUCTS,	:	Order Vacating Decision and Remanding
Appellant	:	Matter to the Area Director
	:	
v.	:	
	:	Docket No. IBIA 00-21-A
MINNEAPOLIS AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	January 28, 2000

Appellant Bee Forest Products sought review of an October 6, 1999, decision issued by the Minneapolis Area Director, Bureau of Indian Affairs (Area Director; BIA). The Area Director assessed damages against Appellant in the amount of \$79,054.59 for timber trespass on the Jesse Stacy Allotment, W¹/₂, SE¹/₄, sec. 16, T. 26 N., R. 2 W., Clark County, Wisconsin. This allotment is located on the reservation of the Ho-Chunk Nation.

In a November 10, 1999, pre-docketing notice and order requiring the Area Director to show cause, the Board stated:

Among other things, Appellant contends that it was denied the opportunity to respond to a filing made in this appeal by the Great Lakes Agency, BIA, because it was not served with that filing until after the Area Director issued his decision. As its first item of relief sought, Appellant asks that this matter be remanded to the Area Director “with instructions allowing [Appellant] an opportunity to respond to the response of the Great Lakes Agency.” Notice of Appeal at 5.

BIA’s appeal regulations require that answers be served on other parties. See 25 C.F.R. §§ 2.12(a) and 2.12(f). The Great Lakes Agency may have believed it was merely providing the administrative record to the Area Office. However, the cover memorandum sets forth the Agency’s position on the appeal, thereby making it an answer to the appeal. The Area Director erred by not ensuring that Appellant received a copy of that answer prior to issuing his decision.

The Board is inclined to grant Appellant’s requested relief and allow the Area Director the opportunity to make a decision in this matter with complete information before him. The Area Director is given until December 3, 1999, in which to show cause why his decision should not be vacated and this matter

remanded to him for further consideration. If the Area Director does not respond to this order or if he fails to show good cause why a remand should not be granted, this matter will be docketed, the decision vacated, and the matter remanded to him.

Notice and Order at 1-2.

The Board has not received a response from the Area Director.

Although there is no right to file a reply brief under 25 C.F.R. Part 2, it appears possible that the Area Director may have issued his decision without knowledge of the facts presented by Appellant in its notice of appeal. In light of the Area Director's failure to respond to the Board's order, it appears that the best course of action is to vacate the decision and remand this matter to the Area Director.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal is docketed, the Area Director's October 6, 1999, decision is vacated, and this matter is remanded to the Area Director for further consideration in accordance with this order.

Kathryn A. Lynn
Chief Administrative Judge

Anita Vogt
Administrative Judge